

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Independent Telephone Association	:	
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	:	00-0233
Petition for initiation of an investigation of the necessity of and the establishment of a Universal Service Support Fund in accordance with Section 13-301(d) of the Public Utilities Act.	:	
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	:	(Cons.)
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Illinois Commerce Commission On Its Own Motion	:	00-0335
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Investigation into the necessity of and, if appropriate, the establishment of a universal support fund pursuant to Section 13-301(d) of the Public Utilities Act.	:	
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SECOND INTERIM ORDER ON REMAND

By the Commission:

I. BACKGROUND AND PROCEDURAL HISTORY

In these Consolidated Dockets, the Illinois Commerce Commission ("Commission") investigated the necessity of establishing a State Universal Service Support Fund ("Fund") pursuant to Section 13-301(d) of the Public Utilities Act ("Act") 220 ILCS 5/1-101 et seq. On September 18, 2001 in the Second Interim Order, the Commission determined that a Fund was necessary and established a Section 13-301(d) Fund. The Second Interim Order limited the qualifying lines to be funded to the primary residence line and a single business line but no economic impact on the Fund size or individual company qualifying amounts was associated with the qualifying line determination.

The Illinois Independent Telephone Association ("IITA") timely filed an Application for Rehearing seeking rehearing on the qualifying line limitation and any impact it would have on the Fund size and individual qualifying amounts as well as seeking rehearing on certain other issues. An Application for Rehearing was timely filed by Intervenor Leaf River, et al. with regard to the qualifying line limitation as well as other issues. A Motion for Clarification was timely filed by the Staff with regard to the qualifying line determinations made in the Second Interim Order. Applications for

Rehearing were timely filed by other parties with regard to other issues. On October 31, 2001, the Commission granted rehearing on four issues, including the qualifying line limitation contained in the September 18, 2001 Second Interim Order.

Following additional evidentiary hearings, the Commission, on March 13, 2002, entered the Second Interim Order on Rehearing. The Second Interim Order on Rehearing corrected mathematical errors, adopted the Verizon adjusted rate of \$20.39 as the “affordable rate” for purposes of the Fund, and approved a Transition Plan as proposed by Intervenors Leaf River, et al.

The Second Interim Order on Rehearing retained the qualifying line limitation for the Fund based upon the Commission’s interpretation and application of relevant state and federal law. The Second Interim Order on Rehearing associated and imposed an economic impact in connection with the qualifying line limitation. The effect of the qualifying line limitation reduced the initial Fund size (as that term is used in the Second Interim Order on Rehearing) from \$11,992,215 (plus administrative expenses) to \$10,535,634 (plus administrative expenses). The qualifying line limitation reduced the final Fund size (as that term is used in the Second Interim Order on Rehearing) from \$9,858,975 (plus administrative expenses) to \$8,695,055 (plus administrative expenses). The Second Interim Order on Rehearing included as an Appendix Leaf River, et al.’s Revised Schedule B, which reflected all of the Commission’s determinations, including the economic impact of the qualifying line limitation, and set forth the initial and final Fund size under the approved Transition Plan.

The IITA sought appellate review of the Commission’s orders regarding the qualifying line limitation and its impact on the Fund size and individual company qualifying amounts by the Fifth District Appellate Court of Illinois. Leaf River, et al. appealed the Commission’s qualifying line limitation, as well. The appeals of the IITA and Leaf River, et al. were consolidated with appeals regarding other Commission determinations contained in the Commission’s orders filed by Harrisonville Telephone Company and Moultrie Independent Telephone Company.

On September 11, 2003, the Fifth District Appellate Court of Illinois filed its Opinion in Docket No. 5-02-0199. The Fifth District Appellate Court reversed the qualifying line limitation contained in the Commission’s orders and reversed the portion of the Commission’s orders reducing the amount of funding by the percentage of secondary lines. The Fifth District Appellate Court made the reversals retroactive to March 13, 2002 (the date of the Second Interim Order on Rehearing). The Fifth District Appellate Court also remanded the case to the Commission for further proceedings relative to the inclusion of all access lines in the funding amounts.

The Commission filed a Petition For Leave to Appeal the Fifth District Appellate Court’s decision to the Illinois Supreme Court. The Petition for Leave to Appeal was granted; and on September 23, 2004, the Illinois Supreme Court filed its Opinion in Docket No. 97172. The Illinois Supreme Court affirmed the Fifth District Appellate Court’s decision on all issues, including but not limited to overturning the Commission’s

qualifying line limitation and requiring the economic consequences of the qualifying line limitation being corrected retroactively to March 13, 2002.

II. IITA MOTION

On October 26, 2004, the IITA filed a "Motion for Entry of Order on Remand without Further Hearing" in these consolidated dockets. The IITA's Motion recited the background and procedural history set forth above. The IITA's Motion asserts that the Commission, on remand, must correct the Fund size and individual company qualifying amounts consistent with the Court's Opinions and the requirements of the Act effective to the first date there was an economic consequence associated with the qualifying line limitation; i.e., March 13, 2002.

The IITA's Motion asserts that no further hearings are required because all necessary information for the Commission to enter a Second Interim Order on Remand in compliance with the Court's Opinions and directions is already contained in the existing record. The IITA's Motion goes on to explain that the then assigned Administrative Law Judge had directed all parties to file exhibits in connection with their Briefs on Rehearing reflecting the particular party's proposed Transition Plan under all of the possible scenarios that were under review on rehearing; i.e., all possible affordable rate determinations and whether there was, or was not, a qualifying line limitation. As was the case with Leaf River, et al.'s Revised Schedule B, which was the Appendix to the Second Interim Order on Rehearing, the record also contains Leaf River et al.'s Revised Schedule A, which reflects the Fund size amounts and individual companies' qualifying amounts under the Commission approved Transition Plan at the Commission's approved affordable rate of \$20.39 but contains no qualifying line limitation as directed by the Fifth District Appellate Court. The IITA asserts that Leaf River, et al.'s Revised Schedule A contains all necessary information for the Commission to enter a Second Interim Order on Remand without further hearing.

The IITA's Motion further asserts that the retroactive Fund adjustment and the associated Funding Companies' collective and individual retroactive funding responsibility can not be finally determined until the effective date of the Commission's correction of the Fund size, on a going forward basis, is known. While, according to the IITA's Motion, the IITA and the Funded Companies could seek a lump sum retroactive adjustment, the IITA recommends, based upon its belief that it is in the best interest of all parties, including the Funded Carriers' customers subject to IUSF surcharges, to recover the retroactive adjustment in 12 equal installments over a one year period of time. The IITA's Motion requests interest on the retroactive amounts due and recommends that the rate of interest be the rates of interest on customer deposits pursuant to 83 Illinois Administrative Code 735.120, as set by the Commission. Those Commission determined interest rates for the years 2002, 2003, and 2004 are 2%, 1.5% and 1.5%, respectively. The IITA, in its Motion, indicates that it is willing to stipulate that an interest rate of 1.5% is appropriate for usage for the year 2005. Finally, the IITA in its Motion recommends that in order to allow the Fund administrator sufficient time to implement the Second Interim Order on Remand, that the Fund size be corrected on a

going forward basis effective January 1, 2005 and that the size and responsibility for retroactive Fund amounts be determined based upon the time period from March 13, 2002 to December 31, 2004.

The IITA requests that the Second Interim Order on Remand authorize and direct the Illinois Small Company Exchange Carrier Association ("ISCECA"), the Fund administrator, to take all necessary actions to implement the Second Interim Order on Remand.

The Administrative Law Judge established a schedule for the filing of Responses and Replies to the IITA's Motion. The Staff filed a timely Response. The Staff, in its Response, supports the manner and methodology that the IITA has represented that the ISCECA, as Fund administrator, will use to calculate retroactive support and interest accruing thereon and Staff supports the granting of the IITA's Motion. No other party filed a Response to the IITA's Motion. No Replies were filed.

III. COMMISSION ANALYSIS AND CONCLUSION

As set forth above, these consolidated dockets come before the Commission on remand. The Fifth District Appellate Court of Illinois and the Illinois Supreme Court have reversed the qualifying line limitation contained in the Second Interim Order and the Second Interim Order On Rehearing and determined that the economic impact of the qualifying line limitation be corrected retroactive to March 13, 2002. Therefore, the exception contained in Ordering paragraph C of the Second Interim Order On Rehearing that the Fund be based upon support for a single residential or business line is removed and all lines shall be funded.

The IITA's Motion correctly asserts that the present record contains all necessary information to enter a Second Interim Order on Remand in accordance with the Court's decisions. The correct initial Universal Service Fund size (as that term is used in the Second Interim Order On Rehearing) is \$11,992,215 (plus administrative expenses) and the final Fund size (as that term is used in the Second Interim Order on Rehearing) is \$9,858,975 (plus administrative expenses). The Transition Plan approved in the Second Interim Order on Rehearing corrected for the removal of the qualifying line limitation is set forth in Leaf River, et al.'s Revised Schedule A attached to the Initial Brief on Rehearing. Leaf River, et al.'s Revised Schedule A is attached to this Second Interim Order on Remand as an Appendix.

The IITA's proposal to correct the Fund size on a going forward basis as of January 1, 2005 and to recover and pay the retroactive amount due from March 13, 2002 to December 31, 2004, together with interest at the rates proposed, in 12 equal installments over a one year period of time beginning in January, 2005, is reasonable and should be approved. The IITA's Motion is granted and the ISCECA, as Fund administrator, is authorized and directed to take all necessary actions to implement this Second Interim Order on Remand.

IV. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over the parties and the subject matter of this proceeding pursuant to the Act;
- (2) in accordance with the opinion and direction of the Fifth District Appellate Court of Illinois in its opinion issued May 23, 2003 in Docket No. 5-02-0199 and the Illinois Supreme Court in its opinion issued September 23, 2004, the qualifying line limitation contained in the September 18, 2001 Second Interim Order and in the March 13, 2002 Second Interim Order on Rehearing is removed and all lines shall be funded beginning March 13, 2002;
- (3) the IITA's "Motion for Entry of Order on Remand without further Hearing" should be granted;
- (4) the Fund size without the qualifying line limitation should be corrected on a going forward basis effective January 1, 2005 and the retroactive Fund adjustment covering the period from March 31, 2002 to December 31, 2004 should be recovered and paid in 12 equal installments over a one year period of time beginning in January, 2005;
- (5) the recitals of fact and conclusions of law set forth in the prefatory portion of this Second Interim Order on Remand are hereby adopted as the findings of fact and conclusions of law of the Commission; and
- (6) the findings of fact and conclusions of law contained in the September 18, 2001 Second Interim Order as modified by the March 13, 2002 Second Interim Order on Rehearing should only be further modified as specifically set forth herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that:

- A. the Universal Service Fund amounts and the Transition Plan approved in the Second Interim Order on Rehearing are hereby modified so as to fund all access lines as follows:
 1. The initial Universal Service Fund amount as used in ordering paragraph A of the Second Interim Order on Rehearing shall be \$11,992,215 (plus administrative expenses);
 2. the Fund shall be reduced in accordance with the proposal of Intervenor's Leaf River, et al. as indicated on Revised Schedule A

attached to their Initial Brief on Rehearing with a final Fund size of \$9,858,975 (plus administrative expenses); Leaf River, et al. Revised Schedule A is attached to this Second Interim Order on Remand as an Appendix;

3. the services defined by the Federal Communications Commission as supported services shall be the state supported Universal Services for the purposes of the Fund with the Fund being based upon support for all access lines;
4. the ISCECA, as Fund administrator, is authorized and directed to take all necessary actions to implement the correction of Fund size on a going forward basis and to implement the collection and payment of retroactive amounts due in accordance with findings (2) and (5).

IT IS FURTHER ORDERED that the Illinois Independent Telephone Association's "Motion for Entry of Order on Remand Without Further Hearing" is hereby granted.

IT IS FURTHER ORDERED that all findings, conclusions and ordering paragraphs contained in the September 18, 2001 Second Interim Order, as modified by the March 13, 2002 Second Interim Order on Rehearing, are only further modified as specifically set forth herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Second Interim Order on Remand is final as to all matters determined herein; it is not subject to the Administrative Review Law.

By Order of the Commission this 21st day of December, 2004.

(SIGNED) EDWARD C. HURLEY

Chairman